

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

#### A. GENERAL INFORMATION

1. Date

12/30/2022

2. Department

Cradle to Career

3. Organizational Placement (Division/Branch/Office Name)

Cradle to Career

4. CEA Position Title

General Counsel & Chief Privacy Officer

5. Summary of proposed position description and how it relates to the program's mission or purpose.  
(2-3 sentences)

The General Counsel and Chief Privacy Officer provides executive oversight and management for all Cradle-to-Career legal services including the complex and innovative data sharing agreements and privacy and security protocols that will enable the Cradle-to-Career Data System to achieve its statutory charge. The CEA serves as the principal policy maker in the areas of privacy law and board governance, ensuring compliance with changing state and federal laws, regulations, and court orders. The incumbent serves as a member of Cradle to Career's Executive Management Team, and is the chief policy advisor to the Executive Director on all matters with legal implications related to both state operations and the ability of the Data System itself to securely and effectively foster evidence-based decision making to help Californians build more equitable futures and empower individuals to meet their full potential.

6. Reports to: (Class Title/Level)

Executive Director (Exempt)

7. Relationship with Department Director (Select one)

- ☒ Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- ☐ Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

8. Organizational Level (Select one)

- ☐ 1st ☒ 2nd ☐ 3rd ☐ 4th ☐ 5th (mega departments only - 17,001+ allocated positions)

## B. SUMMARY OF REQUEST

### 9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

Manages all legal functions for C2C, particularly related to the complex data sharing and governance structures prescribed in statute. Provides legal advice, analysis, and representation to the Executive Director, the Governing Board, and C2C staff regarding the most complex and sensitive legal issues that arise in the context of data sharing and compliance. Advises C2C and state entities contributing data about the legal issues related to implementing the California Cradle-to-Career Data System Act. Acts as a subject matter expert on complex legal topics such as requirements and issues related to data sharing, privacy, compliance, and related agreements. Conducts legal research and analyzes findings to provide sound counsel and/or draft legal opinions and policies for C2C and the data system. Negotiates terms and conditions to secure legal agreements with data providers, contractors, and vendors. Reviews all data requests and collaborates with requestors to identify legally appropriate options. Coordinates with disclosure review experts to develop policies that ensure information disclosed by the data system aligns with the terms of relevant agreements and does not violate privacy laws. Ensures routine and ongoing compliance with all applicable federal, state, data provider-specific laws and regulations, and other statutes to ensure confidentiality and privacy of individual records. Reviews and provides advice related to feasibility studies and proposals for recommendations from the Data and Tools Advisory Board. Collaborates with the general counsels of C2C's 15 existing data sharing partners to create the legal framework needed to achieve the Data System as prescribed in statute. Develops and negotiates new innovative data sharing agreements with non-state entities in order to realize the promise of the Data System, thoroughly addressing indemnity, privacy, and security. Advises C2C senior management, Governing Board, and staff on matters and policies related to C2C's functions, roles, and responsibilities under the Bagley-Keene Open Meeting Act. Researches, interprets, and provides oral and written legal advice to C2C management and staff on federal and state laws and other regulations relevant to C2C's responsibilities. If litigation ensues involving C2C, supports the California Government Operations Agency (GovOps) Deputy Secretary, Legal on further handling, including obtaining additional legal representation for C2C when necessary.

Functions as the subject matter expert and policy-maker for C2C in the area of privacy law, including the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the California Information Practices Act (IPA), and other state and federal and statutory schemes. Consults with the Executive Director and senior staff and provides legal advice, significant policy creation, and program management on all matters concerning state and federal laws, regulations, policies, and procedures related to privacy. Provides leadership to data providers in ensuring that the Data System implements appropriate security safeguards and controls to provide for the confidentiality, integrity, and availability of the State's information assets, regardless of form (electronic, optical, oral, print, or other media). Reviews specific deliverables, validates project compliance with state and federal standards, provides advice on information security issues, and makes recommendations affecting Data System security. Plans and presides over regular, special, or ad hoc Cradle-to-Career Information Securities Task Force meetings; functions as the liaison to the Data System security team; facilitates open discussion; and applies a consensus decision model for decision-making and issue resolution. Ensures information, systems, hardware, software, and personnel are protected from a wide variety of threats and risks in accordance with all applicable laws, the State Administrative Manual, and industry best practices. Acts as the lead in developing and overseeing privacy training, reviewing privacy legislation, and providing general privacy legal review for internal and external stakeholders. As chief legal policy-maker, participates extensively in policy-making that has statewide implications by providing legal advice on new and revised C2C policies and procedures, including contracting and data sharing policies; responsible for ensuring current applicability and compliance with changing laws, regulations, and court orders. Confers with other agencies, such as GovOps, to ensure legal consistency with C2C's policies and procedures. Drafts new or unique legal policies, procedures, guidance, and documents outlining and reflecting C2C's procurement and contracting policies and procedures within the framework established by Assembly Bill 132 (2021). Prepares, reviews, and revises contracts and other transactional documents of significance to C2C and the Data System. Provides legal consultation and support on procurement and contract issues. Conducts legal research of novel and complex policies to provide appropriate legal counsel to stakeholders. Drafts, develops, and conducts training on ethics and conflicts of interest, and advises executive leadership regarding C2C responsibilities under the Political Reform Act. Works and collaborates with C2C executive management and staff to develop a C2C staff training program that includes legally required and programmatically beneficial staff training. Understands the landscape and strategically applies legal expertise to government and legislative affairs at the state and federal levels. Effectively navigates statute and regulations in order to articulate a cohesive strategy to achieve C2C's vision and statutory charge. Uses expertise with state and federal laws to draft and advocate for legislative proposals.

## B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- ☒ Program is directly related to department's primary mission and is critical to achieving the department's goals.
- ☐ Program is indirectly related to department's primary mission.
- ☐ Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The mission of the Office of Cradle-to-Career Data (C2C) is to foster evidence-based decision-making to help Californians build more equitable futures and empower individuals to meet their full potential. To do this, C2C will develop, promote, and maintain a new statewide, longitudinal data system for California that will provide policymakers, researchers, educators, students, families, and other stakeholders answers to key questions about student progression and outcomes. The C2C Data System is bringing together existing data on education and job outcomes from more than a dozen state entities and will make it broadly available through public tools and a data request process. It will provide data-informed tools to help students reach their college and career goals and deliver information on education and workforce outcomes.

This user-friendly system will include resources focused on early learning through K-12 and higher education, as well as on the financial aid and social services that help students reach their goals. California Education Code section 10860 (added by Stats. 2021, Ch. 144, Sec. 8), requires that the Data System be established and considered a source for actionable data and research on education, economic, and health outcomes for individuals, families, and communities, and provide for expanded access to tools and services that support the navigation of the education-to-employment pipeline; and the information should be used to help the state build a more equitable future and address disparities in opportunities and outcomes. This section further requires that the Data System comply with federal and state laws to protect individual privacy, including but not necessarily limited to the federal Family Education Rights and Privacy Act of 1974, the federal Health Insurance Portability and Accountability Act of 1996, the federal Higher Education Act of 1965, and the federal Privacy Act of 1974.

California Education Code section 10867 requires that C2C ensure data privacy and security in accordance with state and federal law, and enter into memorandums of understanding with CCGI and eTranscript California in order to scale, expand, operate, and maintain operational tools. This section further requires that C2C support data requests, including by determining and advising requestors on any legal impediments and identifying legally appropriate options; coordinating the execution of legal agreements with data providers; and contracting with the Committee for the Protection of Human Subjects for the California Health and Human Services Agency to serve as the institutional review board regarding the use of personally identifiable information.

C2C is responsible for providing policy and programmatic oversight that ensures all statutory requirements are met. The CEA will be the in-house expert with oversight over the functional areas of legal services, privacy, and security. Each of these is not only required by law, but foundational to C2C's ability to achieve its mission. No data system can be built or sustained without exceptional performance in each of these functional areas.

## **B. SUMMARY OF REQUEST (continued)**

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

In 2019, the California Legislature called for the establishment of a statewide, longitudinal data system for California. The C2C aims to link education, workforce, financial aid, and social service information to better equip policymakers, educators, and the public to address disparities in opportunities and improve outcomes for all students throughout the state.

The Cradle-to-Career Data System will provide data-informed tools to help students reach their college and career goals and deliver information on education and workforce outcomes. This user-friendly system will include resources focused on early learning through K-12 and higher education, as well as on the financial aid and social services that help students reach their goals. The Data System's tools will be designed to help a wide range of users find the most relevant information and use it to create better outcomes for students. Governor Newsom and the Legislature approved funding for C2C in the 2021-22 budget. The Data System will be implemented by the Government Operations Agency pursuant to California Education Code section 10862. C2C is in the process of staffing to perform the functions specified in statute. In pursuit of these goals, the CEA will need to direct C2C legal, privacy, and security policy and effectively navigate state and federal policy and legal landscapes. The complexity of the legal frameworks needed for C2C's work goes far beyond standard data sharing agreements between state entities. The CEA will need to create new legal avenues for accepting data from, and sharing data with, entities outside the state (e.g., nonprofit and public higher education entities). Additionally, the highest complexity of legal analysis will be required for C2C to develop a secure research portal that will give researchers access to deidentified data for analysis while protecting privacy.

C2C has an Attorney IV position that was filled for one year and vacated on October 18, 2022. During the first year of C2C implementation, the depth and breadth of legal and privacy expertise needed proved to be beyond the scope of an Attorney IV, and the Duty Statement was revised to reflect operational needs. C2C's general counsel must possess an exceptional level of expertise that distinguishes them in a special field of knowledge (privacy and security) and who will serve as the top expert and policy-maker for privacy and security. The CEA will need to collaborate and negotiate with the general counsels from C2C's 15 existing data sharing partners—including the University of California, the California State University, the California Health and Human Services Agency, and the California Department of Education—from equal footing. They will need to do the same with future new data sharing partners, including nonprofit and private institutes of higher education. The CEA classification is necessary in order for C2C to be able to recruit an attorney of the highest caliber who possesses a unique combination of specialized knowledge and skills required for the success of C2C's efforts.

C2C is an incredibly unique entity, being exceptionally new and small but with the need for many technical experts to lead the development of a data system that is first of its kind in California. The high consequence of failure resulting from the integration of more than 30 million people's records would cost the state millions of dollars to remedy. It was recognized that as a new entity, C2C would need to true-up duties and its organizational structure in order to meet operational needs and statutory requirements. It is clear the complexity of the legal work that C2C has is going to get more complicated, not less. When the Attorney IV led the development and execution of multiparty legal agreements for data exchange in May 2022, their counterparts were chief and general counsels of other state entities. Moving beyond this initial collaboration, the CEA will need to collaborate at the highest level with state and federal government; with leaders of similar data systems in other states; and with new nonprofit, public, and private partners. This collaboration will result in the development of policy requests that shape state and federal data privacy policy. The CEA must be creative in developing new data sharing agreements with non-state entities that meet statutory requirements and address unprecedented legal questions related to risk and security obligations. The CEA must be confident in being a national leader in this work.



### **C. ROLE IN POLICY INFLUENCE**

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

C2C is responsible for implementing the California Cradle-to-Career Data System Act and is the managing entity for the Data System itself. The CEA will represent C2C's interests, recommending strategy, and providing project oversight by driving timelines, setting performance expectations and evaluating outcomes using metrics, and ensuring efficacy of legal, privacy, and security services delivered for both internal and external stakeholders.

As a member of C2C's executive team, the CEA is responsible for oversight of all operational needs and support necessary for business continuity. The CEA's role in setting policy will include evaluating, advising, and providing assistance to the Executive Director on:

1. new and innovative legal frameworks for securely sharing data between state and non-state partners that thoroughly address indemnity, privacy, and security
2. compliance with all applicable federal, state, data provider-specific laws and regulations, and other statutes to ensure confidentiality and privacy of individual records
3. negotiated terms and conditions for contractors and vendors
4. legally appropriate options for data requests that ensure information disclosed by the Data System aligns with the terms of relevant agreements and does not violate privacy laws
5. feasibility studies and proposals for recommendations from the C2C Data and Tools Advisory Board

The Legislature set extraordinarily ambitious goals for what the C2C Data System will build and put in place, and there are numerous key milestones aimed at advancing equity for California's young people over the next three years. These goals can only be achieved with legal counsel operating at the executive level, leveraging a keen understanding of policy settings to negotiate and create new and innovative policies and legal frameworks. C2C's initiatives have far reaching impact, are highly visible, and frequently involve sensitive legal, privacy, and security components that have statewide impact on various stakeholder groups. Such responsibilities will elicit scrutiny from the Legislature, federal government, other state agencies, the media, and the public.

### **C. ROLE IN POLICY INFLUENCE (continued)**

#### **13. What is the CEA position's scope and nature of decision-making authority?**

The CEA serves as the principal policy maker and top advisor to the Executive Director on policy issues and activities with legal, privacy, and security components, including the implementation of initiatives and projects that may impact other departmental stakeholders. This position is responsible for policy formulation and implementation, program management, and oversight of all legal functions, including data-sharing agreements and privacy and security protections that are compliant with all relevant laws and regulations. The CEA has decision-making authority over policy and resource allocation under its programmatic areas and provides the Executive Director with legal advice, policy recommendations, and direction on issues related to compliance and the protections necessary for C2C operations and the integrity of the Data System.

The CEA's decision-making authority includes creating, reviewing, revising, and maintaining policies to address the most difficult, complex, sensitive, and novel legal issues involving or affecting the C2C program, including those pertaining to data sharing, privacy, compliance, internal policies and procedures, ethics and conflicts-of-interest, and statutes that affect C2C's operations.

The CEA exercises judgment in all decisions affecting directly subordinate divisions or contracted services, and department wide. The CEA has decision-making authority for the coordination and implementation of initiatives and projects and expenditures. The CEA has the responsibility to help ensure that new or existing initiatives, projects, and processes are implemented in accordance with C2C's mission, policies, and procedures, as well as federal and state laws.

#### **14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?**

The CEA will both develop and implement new policy, as well as interpret and implement existing policy. The incumbent must possess an understanding of existing policies and business procedures that impact the Department and all of the laws and regulations that relate to state operations, governance, privacy, and security. They must also be aware of new laws that have been passed and that are being proposed by the California Legislature and Congress. As changes occur, the CEA will be responsible for developing and implementing new policy to ensure C2C is in compliance with new legislation or court decisions. They will work within the Department's Executive Management Team and with staff in other units to establish the best policies for the Department. The incumbent must also be forward-looking, and be aware of what's on the horizon to ensure policies and procedures can be easily updated to accommodate evolving business and department needs. Internally, the CEA will be responsible for evaluating the needs of stakeholders and employees and developing or updating existing policy to ensure operational programs are legally compliant.